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Supreme Court, U.S.
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No. 91-1376

In The

Supreme Court of the United States

October Term, 1991

CHURCH OF SCIENTOLOGY INTERNATIONAL, et al.,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, et al.,

Respondent.

v.

VICKI J. AZNARAN, et al.,

Real Parties In Interest.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Real Parties In Interest Vicki J. Aznaran and Richard N. Aznaran,[1] oppose the petition for writ of certiorari to

[1] Parties to *Vicki J. Aznaran and Richard N. Aznaran v. Church of Scientology of California, et al.*, No. CV 88-1786 (JMI) (hereinafter referred to as "the Aznarans")

review the judgment of the United States Court of Appeals for the Ninth Circuit filed by petitioners herein.

OPINIONS BELOW

The order of the court of appeals denying the petitioners' petition for a writ of mandamus (Order filed December 4, 1991 in Ninth Circuit No. 91-70659) is unreported. The denial of the petition for rehearing and suggestion for rehearing en banc (Order filed January 30, 1992, in Ninth Circuit No. 91-706592a) is unreported. The November 22, 1991 order of the district court denying the motions to recuse (Order filed November 22, 1991, in U.S. District Court No. CV 88-1786 JMI) is unreported. There is a transcript of the hearing on the motions in the district court during which the court issued its oral decision. (Transcript of Proceedings, Friday, October 25, 1991 in No. CV 90-2042 JMI)

JURISDICTION

The order of the court of appeals was filed on December 4, 1991. The denial of the petition for rehearing was filed on January 30, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 455(a) provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in

any proceeding in which his impartiality might reasonably be questioned."

28 U.S.C. § 455(b)(1) provides: "He shall also disqualify himself in the following circumstances: (1) where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings."

28 U.S.C. § 1651(a) provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

STATEMENT OF THE CASE

By means of the petition before the Court, Scientology attempts to secure the support of the Court in order to buttress its attack on the trial judge after every lower court has rejected Scientology's meritless ploy. The reason the petition is a ploy is because it has been taken, as was the original motion to recuse, solely for the purpose of delaying the jury trial of the Aznarans' case against Scientology. The case was originally filed on April 1, 1988. Trial of the matter was set to commence on October 15, 1991. On September 4, 1991, 41 days before trial and 1617 days after commencement of the suit, Scientology sought to recuse the Honorable James M. Ideman, the trial judge, in the hope of replacing him with another having no familiarity with the factual posture and legal history of this extensive and often caustic litigation.

The underlying case arises from the deceptive recruitment of Richard N. Aznaran and Vicki J. Aznaran into the "church" of Scientology and Scientology's subsequent 15-year exploitation of each of them. Said exploitation included, but was not limited to, subjecting them to tactics of undue influence and coercive persuasion without their knowledge or consent, destroying their marriage in the name of Scientology practices so that a Scientology leader could sexually seduce Vicki and make Richard a virtual work-slave, threatening them with Scientology's retributive policy known as the "Fair Game Policy" by which Scientology could ethically (according to its own peculiar justice system) – and literally – destroy plaintiffs, and ultimately condemning Vicki to serve a sentence in a forced-labor camp in the California desert known as "Happy Valley" where the conditions were so filthy that her uterus became infected concerning which she was never allowed to obtain any medical treatment whatsoever.

Scientology did, and does, not want these and many more extremely distasteful facts to be tried to a jury. Thus, it brought the baseless motion to recuse as a means of delaying the jury trial which was formerly set for October 15, 1991.

Defendants alleged that Judge Ideman singled out Scientology and "falsely accus[ed]" it and its counsel of "flagrant misconduct," "blatant disregard of [the] Court's Orders," and "outrageous litigation tactics;" that the trial judge on the motion to recuse, the Honorable J. Spencer Letts, applied the wrong standard; and that the Ninth Circuit improperly denied mandamus. The history of this

case, and the standards applied by the various courts below, show that such is not true.

In support of its motion below, Scientology marshalled a litany of claimed transgressions which, it contended, illustrated the bias and prejudice of Judge Ideman toward Scientology. Judge Letts concluded that the motion was extremely weak.

In the trial court Scientology made the claim that "virulent religious bigotry has infested Judge James M. Ideman" which required his recusal. (Supplemental Memorandum In Support of Motion to Recuse the Honorable James M. Ideman, No. CV 88-1896 JMI at p. 1:22-28). The use of such invective not only exposed the absence of any legitimate factual predicate for the motion to recuse below, it insulted the even-handedness with which Judge Ideman treated the parties in the litigation.

On or about May 1, 1989, Scientology focused its then-religiously-claimed objection on plaintiffs' characterization of it as a "Cult" and sought an Order from Judge Ideman striking all such references. Scientology stated:

> Plaintiffs' Amended Opposition is extraordinary in one regard – it is the most invective-filled, anti-religious paper that these defendants and their collective counsel have ever seen. The Amended Opposition is replete with degrading remarks having no conceivable relevance to the issues at hand. In just the introduction itself, plaintiffs feel required to describe a religious organization with millions of members, as "pathetic," "criminal," causing "terror," "evil," a "menace."

(Defendants' Ex Parte Motion To Strike filed May 1, 1989, at pp. 10:18-11:2)

Judge Ideman quickly granted Scientology's motion. He said:

> The defendants' motion to strike all derogatory references to defendants in plaintiffs' amended opposition is also GRANTED. Every reference in plaintiffs' opposition to defendants as a "Cult, Scientology Cult" or "SC" and every reference to defendants' religious practice of auditing as "brainwashing," "mind control" or other pejorative description shall be stricken from the record. The Court will continue to treat defendant, Church of Scientology ("defendant") as a Church until plaintiffs allege facts to persuade the Court that defendant should not be treated as a church in this action. The parties are free to allege facts in their written briefs however, the Court will not tolerate name calling or scurrilous terminology in the parties' papers. Therefore, the Court exhorts the parties to treat one another with respect and common courtesy.

(Order filed May 4, 1989 at pp. 1:18-2:10)

After Judge Ideman's May 4, 1989 Order, he denied two summary judgment motions brought by Scientology. (Order Denying Defendants' Motion For Summary Judgment filed May 25, 1989; Order Denying Defendants' Motion For Summary Judgment filed April 26, 1991)

In May 1991, Scientology tricked plaintiffs into discharging their counsel of record by asserting the case could be settled provided that said counsel, Ford Greene, not be in any way involved. (Declaration of Richard N. Aznaran executed July 1, 1991; Declaration of Vicki N.

Aznaran executed July 1, 1991) After plaintiffs discharged Ford Greene on June 7, 1991, (Declaration of Ford Greene filed August 2, 1991 at p. 2:15-17), Scientology withdrew its offer to engage in settlement negotiations. (Declaration of Barry Van Sickle executed July 1, 1991)

On June 19, 1991, after the Aznarans discharged Greene, and were without representation, Scientology noticed for hearing a 50-page summary judgment motion (plus a 22-page separate statement), supported by 658 pages of exhibits, for July 22, 1991, based upon the statute of limitations. (Declaration of Ford Greene filed August 2, 1991, at p. 3:1-11)

With the potentially dispositive summary judgment motion pending, plaintiffs were without counsel. Relying on a state court finding that he had not violated any attorney client confidences, former Scientology lawyer Joseph A. Yanny agreed to represent plaintiffs and filed his substitution on July 1, 1991. (Declaration of Ford Greene filed August 2, 1991, at p. 2:18-21, Statement of Decision in *RTC v. Yanny,* L.A.S.C. No. C 690 211 at pp. 1-2)

On July 3, 1991, Yanny moved to continue the hearing date on the statute of limitations summary judgment motion for 60 days. (Declaration of Ford Greene filed August 2, 1991, at p. 3:27-4:3)

On July 5, 1991, Scientology filed a 98-page summary judgment motion (plus a 16-page separate statement) based on the First Amendment supported by 926 pages of exhibits noticed for hearing on August 5, 1991. (Declaration of Ford Greene filed August 2, 1991, at p. 3:1-11)

On July 9, 1991, Yanny moved to continue the hearing date on the first amendment summary judgment motion for 60 days. (Declaration of Ford Greene filed August 2, 1991, at p. 4:4-7)

On July 24, 1991, Judge Ideman summarily vacated Yanny's substitution, reinstated Ford Greene as attorney of record, and ordered that all remaining motions be noticed no later than August 19, 1991 and be no longer than 35 pages in length. (Order filed July 24, 1991)

On July 26, 1991, Ford Greene first received notice that Judge Ideman had reinstated him as Plaintiffs' Counsel. (Declaration of Ford Greene filed August 2, 1991, at p. 4:8-15)

On July 29, 1991, Scientology filed four more motions, all noticed for August 19, 1991:

- 35-page Motion to Exclude Plaintiffs' Designated Expert Witness with 405 pages of supporting exhibits;
- 31-page Motion to Dismiss with 303 pages of supporting exhibits, plus 6-page supplemental brief;
- 16-page Motion for a Separate Trial on the Issue of Releases and Waivers with 114 pages of supporting exhibits;
- 11-page Motion to Strike All Papers filed by Joseph A. Yanny with 15 pages of supporting exhibits.

(Declaration of Ford Greene filed August 2, 1991, at p. 3:1-11)

On July 31, 1991, plaintiffs' counsel Ford Greene reobtained possession of plaintiffs' case file in this matter

and spoke with Judge Ideman's clerk who advised him that Judge Ideman had stricken all papers filed by Joseph A. Yanny. (Declaration of Ford Greene filed August 2, 1991, at p. 4:16-28)

On August 2, 1991, the Aznarans sought an ex parte order allowing them to file their oppositions to all *six* then pending motions totalling 285 pages with 2,421 pages of exhibits on or before August 26, 1991. (Plaintiffs' Ex Parte Application filed August 2, 1991)

On August 9, 1991, Judge Ideman denied plaintiffs' August 2 ex parte application, and stated:

> In light of the Court's inadvertently approving Plaintiffs' substitution of counsel and the subsequent reinstating of Ford Greene as Plaintiffs' counsel, however, the Court has determined that, in fairness to the parties, some extension of time for filing opposition and replies to *already pending* motion is appropriate. Therefore, although the Court does *not* by this Order alter the finality of the August 19, 1991 date for the filing of any motions in this action, the Court hereby GRANTS Plaintiffs an extension until 3:00 p.m. on August 19, 1991 to file any opposition to any pending motions in this action. The Court also hereby GRANTS Defendants an extension until 3:00 p.m. on August 26, 1991 to file any reply briefs to any pending motions in this action. All pending motions will be continued to the September 9, 1991 hearing date in order to permit the Court to rule after all submissions have been made.

(Order filed August 9, 1991)

On August 23, 1991, in conjunction with appropriate ex parte applications, the Aznarans filed two Genuine Statements of Issues supporting their opposition to the summary judgment motions on the statute of limitations and the First Amendment. Particularly as to the Genuine Statement which pertained to the statute of limitations summary judgment motion, Scientology made some glaring misrepresentations concerning the facts in the record concerning which the Aznarans suggested sanctions should be imposed.

On August 26, 1991 Scientology filed a Supplemental Memorandum In Support of Defendants' Motion to Dismiss with Prejudice. In support thereof Scientology filed three declarations by Thorn Smith, Edward Austin and Sam Brown.

The Declaration of Thorn Smith, in part, stated:

> I am a licensed attorney in the state of California. . . . [¶] On Saturday, August 3, 1991, I conducted a surveillance at the law offices of Ford Greene, the attorney for the plaintiffs in a federal case pending in Los Angeles, *Aznaran v. Church of Scientology of California* Case No 88-1786 JMI (Ex). The address of his office is 711 Sir Francis Drake Boulevard, San Anselmo, California, which is a storefront in a two-story building. [¶] during the course of that morning, I observed a white male, who was driving a grey Cadillac, having a California tag reading "I MENSA," outside those law offices. [¶] The man I saw took various boxes from the trunk of his car and brought them into Ford Greene's building, along with another unidentified white male.

(Declaration of Thorn Smith dated August 26, 1991)

The Declaration of Edward Austin was identical to that of Thorn Smith. (Declaration of Edward Austin August 26, 1991)

The Declaration of Sam Brown stated:

> I am a licensed private investigator in northern California. . . . I ran a surveillance outside the law offices of Ford Greene at 711 Sir Francis Drake Boulevard, San Anselmo, California during the period from August 15 through August 21, 1991. . . . [¶] During the course of this surveillance, a white male having long brown hair tied back in a pony tail, was observed entering and leaving the Greene law offices each day from the 15th through the 21st. This man spent most of the day at the offices. He was also observed bringing in boxes from Kinko's copy center. [¶] this individual was videotaped entering and leaving the building and standing in front of it on several different days. Some portions of the video have been printed as still photographs and are attached hereto as Exhibit A.

(Declaration of Sam Brown dated August 26, 1991)

On August 30, 1991, Judge Ideman issued an Order in which he stated as follows:

> IT IS HEREBY ORDERED:
>
> The Court hereby ACCEPTS all submissions from both parties in this action submitted to date. By doing so, the Court in no way condones the repeated violations of its Orders in this action. The Court has not been favorably impressed with either counsel's lack of compliance with either its Orders or the Local Rules

throughout the pendency of this action. Because *both* parties' counsel have felt free to repeatedly act in blatant disregard of this Court's Orders and more importantly, in light of the fact that this Court seeks to reach an adjudication on the merits of all pending motions, rather than becoming mired in adjudicating which side in this litigation is more often in violation of the rules of this Court, the Court ACCEPTS all submissions to date and sets a ***final*** date of Wednesday September 4, 1991 at 3:00 p.m. by which Defendants' reply to Plaintiffs' late filed Opposition to the Motion to Dismiss must be filed. *No other submissions regarding pending motions will be accepted by the Court.* Counsel are reminded that this submission should be in accordance with the page limits prescribed by the Local Rules.

In light of the flagrant misconduct of both sides in this action, all pending requests for sanctions are hereby DENIED. Counsel is put on notice, however, that should they continue to engage in outrageous litigation tactics, the Court will not hesitate to use its sanctioning power.

IT IS SO ORDERED.

(Order filed August 30, 1991)

September 4, 1991, Scientology filed the motion to recuse Judge Ideman.

In light of the foregoing litigation tactics, it appears that Scientology implemented the litigation principles articulated by L. Ron Hubbard, the "founder" of Scientology.

In 1960, L. Ron Hubbard instructed his organization on the manner in which Scientology should approach litigation. He stated:

> In the face of danger from Govts or courts there are only two errors one can make: (a) do nothing and (b) defend. The right things to do with any threat are to (1) Find out whether we want to play the offered game or not, (2) If not, to derail the offered game with a feint or attack upon the most vulnerable point which can be disclosed in the enemy ranks, (3) Make enough threat or ***clamor*** to cause the enemy to quail, (4) Don't try to get any money out of it, (5) Make every attack by us also sell Scientology and (6) Win. If attacked on some vulnerable point by anyone or anything or any organization, always find or ***manufacture enough threat*** against them to cause them to sue for peace. Peace is bought with an exchange of advantage, so make the advantage and then settle. ***Don't ever defend. Always attack.*** Don't ever do nothing. Unexpected attacks in the rear of the enemy's front ranks work best. [Emphasis added.]

(Declaration of Vicki J. Aznaran executed September 28, 1991, Exhibit A.)

Thereafter, in 1968 Hubbard wrote:

> DO NOT simply fall back out of communication if you are attacked, but attack, much more forcefully and artfully and arduously. And if you are foolish enough to have an attorney who tells you not to sue, immediately dismiss him and get an attorney who will sue. . . . [¶] In other words, do not, at any moment leave this act unpunished, for, if you do you are harming all other Scientologists in the area. When you are

> attacked it is your responsibility then to secure from further attack not only yourself but all those who work with you. Cause blue flame to dance on the court house roof until everybody has apologized profusely for having dared to become so adventurous as to arrest a Scientologist who, as a minister of the church, was going about his regular duties.

(Declaration of Vicki J. Aznaran executed September 28, 1991, Exhibit B.)

Scientology was unable to tolerate Judge Ideman giving the Aznarans a fair opportunity to respond to the daunting glut of motions Scientology had filed while the Aznarans were sorting out their problems with representation that Scientology's tactics had created in the first place. Thus, Scientology has sought to "[c]ause blue flame to dance on the court house roof" by boldly attacking Judge Ideman as a walking "infest[ation]" of "virulent religious bigotry." Such an assault is no more than Scientology's practice of retribution by litigation.

> The DEFENSE of anything is UNTENABLE. The only way to defend anything is to ATTACK, and if you ever forget that, then you will lose every battle you are ever engaged in, whether it is in terms of personal conversation, public debate, or a court of law. NEVER BE INTERESTED IN CHARGES. DO, yourself, much MORE CHARGING, and you will WIN. And the public, seeing that you won, will then have a communication line to the effect that Scientologists WIN. Don't ever let them have any other thought than that Scientology takes all of its objectives. [Original capitalization.]

(Declaration of Vicki J. Aznaran executed September 28, 1991, Exhibit B.)

Thus, "[t]he purpose of the suit is to harass and discourage rather than to win." (Declaration of Vicki J. Aznaran executed September 28, 1991, Exhibit B.)

> The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway, well knowing that he is not authorized, will generally be sufficient to cause his professional decease. ***If possible, of course, ruin him utterly.*** [Emphasis added.]

(Declaration of Vicki J. Aznaran executed September 28, 1991, Exhibit B.)

It has been public knowledge for well over a decade that Scientology admits of no limits when it seeks to recuse a judge which it considers to be hostile. See, The American Lawyer (December 1980) at 30, "Scientology's War Against Judges."

REASONS FOR DENYING THE PETITION

I.

ADOPTION OF ARGUMENTS SET FORTH BY REAL PARTIES *SCOTT*

The Aznarans adopt and join in the arguments set forth in the opposition set forth by Real Parties *Scott* and thus, will not repeat those arguments here.

II.

THE DISTRICT COURT'S ORDER HOLDING THAT PETITIONERS HAD FAILED TO ESTABLISH THAT THE DISTRICT COURT JUDGE'S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED OR THAT HE HAD A PERSONAL BIAS OR PREJUDICE CONCERNING PETITIONERS WAS NOT CLEARLY ERRONEOUS

Scientology alleged below that Judge Ideman singled them out and "falsely accus[ed]" them and their counsel of "flagrant misconduct," "blatant disregard of [the] Court's Orders," and "outrageous litigation tactics." Scientology contended below, and contends here, that there is no possible factual basis for such comments being directed at it. Scientology manipulated the discharge of plaintiffs' counsel by promising settlement were he to be discharged, and then after Scientology accomplished his discharge, withdrew the offer of settlement and loaded up the record with dispositive motions while the Aznarans were in pro per. Such is an "outrageous litigation tactic." The misrepresentations set forth in their Separate Statement of Uncontroverted Fact in relation to the statute of limitations summary judgment motion constitute a "blatant disregard" of the mandate to be honest with the Court. Finally, the ongoing surveillance and videotaping of plaintiffs' counsel and clients is an "outrageous litigation tactic." Any one of the above would provide ample factual predicate for the trial court's comments set forth in its August 30, 1991 Order.

"[T]here is a salient difference between a judge making observations about proceedings and being prejudiced

regarding parties or issues in proceedings." *In re A.H. Robbins Co., Inc.* (D.Kan. 1985) 602 F.2d 243, 248.

"A judge should not recuse himself on unsupported, irrational, or highly tenuous speculation," *Hinman v. Rogers* (10th Cir. 1987) 602 F.Supp. 243, 248, and has as much of an obligation "not to recuse himself when it is not called for as he is obliged to when it is." *In re Drexel Burnham Lambert Inc.* (2nd Cir. 1988) 861 F.2d 1307, 1312, *cert. denied sub nom., Milken v. S.E.C.* (1989) 109 S.Ct. 2458.

In this regard, the Ninth Circuit has addressed the nature and scope of bias necessary to warrant recusal under 28 U.S.C. § 455:

> While bias or prejudice may spring from many sources, often extrajudicial in their origin, the negative bias or prejudice of the kind alleged here will disqualify only if it is an attitude or state of mind that belies an aversion or hostility of a kind or degree that a fair-minded person could not entirely set aside when judging certain persons or causes. It is an animus more active and deep-rooted than an attitude of disapproval toward certain persons because of their known conduct, unless the attitude is somehow related also to a suspect or invidious motive such as racial bias or a dangerous link such as financial interest, and only the slightest indication of the appearance or fact of bias or prejudice from these sources would be sufficient to disqualify.

United States v. Conforte (9th Cir. 1980) 624 F.2d 869, 881, *cert. denied* 499 U.S. 1012 (1980). It is clear from the facts in the case at bar that the standard articulated in *Conforte*

has not been met. Scientology's clamor about Judge Ideman's alleged "virulent religious bigotry" has no basis in the record.

Bias or prejudice must arise from "an extrajudicial source and result in an opinion on the merits on some basis other than what the judge has learned from his participation in the case." *United States v. Grinnell Corp.* (1966) 384 U.S. 563, 583. Defendants have made no showing whatsoever that Judge Ideman's alleged bias is predicated upon some extrajudicial source.

Moreover, the fact that Scientology did not like the rulings made by Judge Ideman did not provide any basis for his recusal because "[r]epeated rulings against a litigant, no matter how erroneous, and how vigorously and consistently expressed, are not disqualifying." *Kelly v. New York* (D.Mass. 1956) 139 F.Supp. 319, 320. Thus, it has been long held that "[b]ias or prejudice which can be urged against a judge must be based on something other than rulings in the case." *Brown v. Wilson* (W.D. Penn. 1973) 363 F.Supp. 707, 710 quoting *Berger v. United States* (1921) 255 U.S. 22, 31.

> [W]e cannot agree that adverse rulings by a judge can per se create the appearance of bias under section 455(a). A trial judge must be free to make rulings on the merits without the apprehension that if he makes a disproportionate number in favor of one litigant, he may have created the impression of bias. Judicial independence cannot be subservient to a statistical study of the calls he has made during the contest.

In re International Business Machines Corp. (2nd Cir. 1980) 618 F.2d 923, 929.[1] Thus, "[f]acts learned, opinions formed or adverse rulings made during the course of judicial proceedings do not themselves establish the personal bias or prejudice required for disqualification." *United States v. Scaccia* (N.D.N.Y. 1981) 514 F.Supp. 1353, 1355.[2]

Furthermore, "A timid judge, like a biased judge, is intrinsically a lawless judge." *Wilkerson v. McCarthy* (1949) 336 U.S. 53, 65 (Frankfurter, J., concurring.) This is particularly true in the face of Scientology's penchant for making broad unsubstantiated claims of religious bigotry whenever such allegations serve its purposes of the moment. In fact, the exercise of discretion in connection with late filings do not provide a basis for recusal.

> "Finally, Mr. Barr alleges that Judge Sweigert has repeatedly permitted plaintiff to circumvent the rules of procedure by permitting late filings and delaying the trial date. Control of a court's calendar, and the level of compliance a judge demands of attorneys practicing before him, are matters singularly within the discretion of each individual judge."

Martelli v. City of Sonoma (N.D. Ca. 1973) 359 F.Supp. 397, 401. Contrary to Scientology's claims, the record reflects

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[1] The *IBM* court also stated that it "seems evident that statistics alone, no matter how computed, cannot establish extrajudicial bias. There is no authority for, and no logic in, assuming that either party to a litigation is entitled to a certain percentage of favorable decisions." *IBM*, 618 F.2d at 930.

[2] Accord: *United States v. Anderson* (8th Cir. 1970) 433 F.2d 856, 860.

that Judge Ideman had not disallowed any of its filings. Apparently, Judge Ideman made allowances for the fact that plaintiffs' counsel was a sole practitioner with a single support person working adverse to Scientology's unified defense consisting of *seven* large and well-financed law firms. Judge Ideman exercised his discretion so that a decision on the merits could be made. A review of the record in this case reveals that Judge Ideman has consistently sought to get to the issues in the case, rather than become bogged down in allegations of procedural transgressions.[3]

Also, it "is well settled that actions of a judge in pending or previous litigation in which the movant has been involved are not grounds for disqualification. . . . " *Southerland v. Irons* (6th Cir. 1980) 628 F.2d 978, 980. Thus, Scientology's claims regarding Judge Ideman's alleged bias in the *Scott* litigation are misplaced as well.

A. The Time Magazine Cover

During the October 25, 1991, hearing on the motion to recuse Judge Ideman, the Honorable J. Spencer Letts stated that he was not able to draw any significance from the existence of the *Time* Magazine article. He stated:

> Without being difficult about it, different things capture different people's opinions, and people have things they like, things that tickle

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[3] *See*, Order filed August 30, 1991. (The "Court seeks to reach an adjudication on the merits of all pending motions, rather than becoming mired in adjudicating which side in this litigation is more often in violation of the rules of this Court.")

their sense of humor. There are a lot of reasons why people wear the things they wear, display the things they display.

I just simply think it's inappropriate to draw inferences about any individual who works in those chambers because there is something hanging on the wall in those chambers that I don't know how they [sic] got there. I can't get there from here, but if I thought it was relevant, I would think it was appropriate to consider it.

Transcript of Proceedings, October 25, 1991 at pp. 13-14

The *Time* magazine thing, while I rather thought that defendants might want to address it, it didn't seem then and doesn't seem now anything you can draw any inferences from.

Id. at p. 15

What I have said is that a picture hanging on a wall that nobody has described for me what wall it's on, who put it there, why it's there, or any of those things, I don't think you can draw any inference from the existence of that picture because people do things for different reasons.

In my judgment it would be entirely inappropriate to draw the inference, any inference, from the mere existence of a *Time* magazine cover in a frame on a wall anywhere. It's not enough to draw an inference from. And I don't care what the underlying article said.

Id. at pp. 16-17

. . . I would respond – and this is as far as I'm going to do this -- that case has generated a

> lot of paper, it's caused Judge Ideman and his staff to do a lot of work, it is a case that is known to exist – *Time* magazine is a widely circulated, well known publication – a case that has generated, I presume, a lot of attention and a lot of work in that office, made its way to the cover of *Time* magazine, and somebody undertook to take that cover and put it on the wall.
>
> There is no question that the cover displays some notoriety. It doesn't, in my judgment, display any attitude in and of itself of anybody who put it there.
>
> *Time* magazine has independent significance. This lawsuit in that chambers, if it doesn't occupy a lot of attention, I'd be surprised.
>
> I don't think you can infer from *Time* magazine, which is independent, as I said, its portrayal of whatever it has chosen to portray, I don't think you can take that as evidence of any state of mind for anybody that chose to hang it there. I simply don't believe that, so I don't credit it for that.

Id. at pp. 18-19

Since no inference can be drawn from the presence of a nationally distributed magazine in the work-area of a judge's chambers, its presence provided no basis for the recusal of the trial judge.

B. The Aznarans' Late Filings And Scientology's Outrageous Litigation Tactics

Judge Letts' discussion of Judge Ideman's August 30, 1991 order did not find that the language of said order indicative of bias or prejudice against Scientology. Judge Letts said,

> The things in the case of Aznaran versus Church of Scientology, as I understand the allegation, the thing that is thought to demonstrate the bias is that Judge Ideman accused both parties of flagrant misconduct, blatant disregard of the Court's orders and outrageous litigation tactics.
>
> The Church of Scientology, as I understand it, largely undisputed, says that the blatant disregard of the Court's order was not attributable to it.
>
> The flagrant misconduct, that's sort of an undefined phrase, and outrageous litigation tactics is an undefined phrase, too.
>
> To the extent that blatant disregard of the Court's orders was confined to the other party, the problem, as I see it, is simply in the use of the conjunctive "and."
>
> The conclusion drawn that the barrage of paper and the barrage of orders that he drew, to call it outrageous litigation tactics and/or flagrant misconduct, even if this Court were to disagree with those conclusions, which I am not saying I do, I'm simply saying that if I did disagree with those conclusions, they would not in my judgment, show any bias that results from anything but the judicial process.

> I don't know whether that sort of thing that has happened at this hearing has happened in Judge Ideman's court. It has not been alleged, but I would have considered it flagrant misconduct.
>
> I don't know whether I would call it outrageous litigation tactics or not, but I cannot say that it is possible, based upon the record before me, to conclude that his statements that both parties had engaged in flagrant misconduct, blatant disregard or outrageous litigation tactics represent a pre-existing bias that didn't result from the judicial process. I would deny the motion in that case.

Id. at pp. 24-25

Based upon Judge Letts' statements regarding Scientology's motion to recuse Judge Ideman in the *Aznaran* case, it is clear that Scientology did not provide an adequate basis to support its motion to recuse.

CONCLUSION

For all the reasons set forth above, the petition for a writ of Certiorari should be denied.

Dated: May 5, 1992

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